EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN, et al., **Plaintiffs,** v. **DAIRY FARMERS OF AMERICA, INC., DAIRY MARKETING SERVICES, LLC, and DEAN FOODS COMPANY,** **Defendants.**	)	**Civil Action No. 5:09-CV-00230**

DECLARATION OF GREGORY WICKHAM

I, Gregory Wickham, make the following declaration based upon personal knowledge of the matters set forth here.

1. I am currently the General Manager of Dairy Marketing Services, LLC ("DMS"), the common marketing agency that is one of the named Defendants in this case. I also serve as the Chief Executive Officer of Dairylea Cooperative, Inc., one of the three cooperatives that are the member-owners of DMS, and as the President of Dairy Farmers of America, Inc.'s ("DFA") Farm Services operation. I have been working full-time with and for dairy cooperatives in the northeastern part of the United States since I started work for Dairylea Cooperative, Inc. in 1997, and I had dealt with dairy coops and dairy farmers as a lender before that time. From 2002 until 2008, I served as the chief operating officer of DFA's Northeast Area Council, which serves an area that overlaps in part and differs in part from Federal Order 1 (it includes Maine, for example, which is outside the geographic boundary of Order 1). As a result of the various positions I have held, I am familiar with the day-to-day workings of DMS,

Dairylea and DFA in the marketing of milk in the northeast, including the marketing of milk to Dean Foods Company ("Dean").

2. DMS is an LLC that is also a common marketing agency that today markets milk for almost 8,000 dairy farmers in the northeastern United States. DMS is owned by three cooperatives: Dairylea, DFA and St. Alban's. Although DMS does not directly have any farmer members, it is indirectly owned by the farmers who belong to and own Dairylea, DFA and St. Alban's, and DMS's operations are overseen by a Board of Directors made up of dairy farmers from each of its owner coops. These three coops have all designated DMS as their exclusive marketing agent for raw milk in the northeastern United States. As of August 2010, there were about 1,441 Dairylea producers marketing milk through DMS in the northeast, about 1,463 DFA producers and about 446 dairy farmers who were members of St. Albans. Land O'Lakes, Inc., a coop headquartered in Minnesota, is a partner of DMS with respect to milk marketing in the northeast, and there are about 1,449 Land-O-Lakes dairy farmers marketing through DMS as of 2010. A number of other coops are members of one of the DMS owners or otherwise participate in marketing their milk through DMS, including Mount Joy, Cortland, Oneida-Madison, Lowville, United Ag Services, NFO, Schoharie, Mass Fed, Jefferson Bulk, Konhokton, South New Berlin, and Farmer Friendly. In addition, DMS in 2010 markets the milk of hundreds of independent dairy farmers who are not members of any cooperative.

3. In 2010, DMS marketed approximately 16 billion pounds of milk, somewhat over half of which is produced by dairy farmers who are members of Dairylea, DFA and St. Albans, and most of the rest of which is either produced by dairy farmers who are members of one of our affiliated cooperatives or who are independent dairy farmers who market through DMS. There is some milk that DMS acquires through swaps with other coops that enable both

parties to the swap to save on hauling costs. Most but not all of the milk that DMS markets is delivered to plants in Federal Order 1. In September 2010, for example, DMS marketed a total of 1.272 billion pounds of raw milk, 1.166 billion pounds of which was marketed to plants in Order 1. In September 2010, the total amount pooled in Order 1 was approximately 1.944 billion pounds. By way of comparison, data published regularly by the Market Administrator shows that there are in excess of 13,000 dairy farmers pooling an average of about 2 billion pounds of milk per month in Federal Order 1.

4. When DMS was formed back in 1999, we told dairy farmers and coops that we were expecting that DMS could result in hauling efficiencies of 3-5¢/cwt per month as an average figure across the total volume of milk DMS would market. We have in fact done better than that. When even that projected average savings of 3-5¢/cwt is applied across our entire current volume of milk, that obviously represents very substantial efficiencies and very significant gains for dairy farmers in terms of their milk checks. I am also very proud of the fact that by bargaining together the coops who work together through DMS have been able to enhance revenues received by farms. Prior to DMS, its owner and affiliated coops tended to bid the price of milk down whenever they desired a new market. I attach to this Declaration, for example, a chart that Dairylea has prepared showing that the premiums earned by its members in their milk checks (payments over the federal blend price) have increased significantly since DMS was created.

5. I have reviewed and am generally familiar with the allegations in the Revised Amended Complaint in this case. I have also reviewed the papers recently filed with the Court seeking Preliminary Approval of a Proposed Settlement ("Proposed Settlement") between the Plaintiffs and Dean.

6. Based upon my experience in marketing milk for Dairylea, DMS and DFA in the northeastern United States, including negotiating with Dean and other processors in that area of the country, I see some very significant harmful consequences for the dairy farmers who market their milk through DMS as a result of the Proposed Settlement, and in particular Section 9.2. As I understand that provision, if the settlement is approved, Dean will be obligated to offer to purchase up to 60 million pounds of raw milk a month—approximately 1200 tanker loads per month—from marketers other than DMS or DFA, at a price that Dean determines to be the "competitive market price" for raw milk. According to Section 9.2, that milk would be delivered to the Dean plants located in East Greenbush, New York, Franklin, Massachusetts and West Lynn, Massachusetts.

7. This "offer to purchase" provision, as I read the Proposed Settlement and the Memorandum Plaintiffs filed in Support of their Motion for Preliminary Approval, seems expressly designed to take business opportunities away from the dairy farmers who market through DMS and give those opportunities to other dairy farmers. The three Dean Foods plants referred to in the Proposed Settlement Agreement—East Greenbush, New York, Franklin, MA and West Lynn, MA—are, at this point in time, almost entirely served by DMS. The average monthly volume of DMS milk going into those three plants in late 2010 totals approximately 140 million pounds/month. By way of comparison, to the best of my knowledge, there are at this point only about 4-5 million pounds per month of raw milk not marketed through DMS that is currently going into the East Greenbush plant, and I do not believe there is any substantial quantity of non-DMS milk going to the Franklin and West Lynn plants. As I understand Section 9.2 of the Proposed Settlement, it means that Dean will in effect say to dairy farmers (even those whose milk had been going into these three plants), if you want to take advantage of Dean's offer

to purchase at the price we specify, then you have to be willing to market your milk *outside of DMS.*

8. If the offers to purchase referred to in the Proposed Settlement are accepted by dairy farmers who do not market through DMS, then the volume of DMS' shipments into those plants will be reduced by up to 60 million pounds per month, or over 40% of their current total, and DMS would have to find alternative locations at which to market that 60 million pounds of milk. It is difficult to predict where DMS would be able to market that volume of milk, and to what extent DMS would be required to reduce its prices in order to successfully place such a large volume of milk. It is also likely that DMS would incur additional costs in hauling that 60 million pounds of milk to what would almost certainly be less advantageous locations, since we would necessarily be disrupting the supply arrangements DMS has currently made to minimize the transportation cost for all of the farmers marketing through DMS. The prospect of potentially reduced prices and increased hauling costs will mean reduced pay prices for the dairy farmers who market through DMS, regardless of whether their milk had been going to the three Dean plants at issue.

9. The other part of this offer to purchase provision that will have significant adverse consequences for DMS dairy farmers is the sole discretion given to Dean to determine the "competitive market price" for the raw milk it will offer to purchase under Section 9.2 at these three plants. This provision is virtually certain, for the reasons I explain below, to result in Dean offering to pay lower prices for milk.

10. First, I have been involved in negotiating with Dean regarding the sale of raw milk for almost a decade on behalf of Dairylea, DMS and DFA. We frequently disagree with Dean about market conditions and about what constitutes a competitive market price for raw

milk at the various Dean plants we serve. In the many discussions I have had on those topics with Dean over the years, when there are disagreements on these issues, Dean has consistently seen the competitive market price for raw milk delivered to Dean's plants in the Northeast as being *lower* than Dairylea, DMS or DFA believes it to be. Our differences of opinion over the competitive market price have varied over the years from little or no difference, on a few occasions, to differences of as great as \$1.00/cwt. For example, there is one Dean plant at which we primarily provide milk for Class I purposes, but also ship about 10 million pounds a month of milk that is used for Class II purposes. With respect to that Class II milk, we have told Dean repeatedly that we felt the milk was underpriced by over \$1.00/cwt, but for years they were unwilling to give ground in the negotiations. Even with a recent price increase to that plant, it is in my view still underpriced by \$.40-.50/cwt.

11. Second, it is widely understood in the raw milk marketing business that there is a certain cost associated with "balancing" a processing plant's needs for milk—that is, delivering whatever amount of milk the plant requires, given all of the daily, weekly and monthly ups and downs of the plant's needs, which frequently do not coincide with increases and decreases in milk production. For example, when schools are out of session, plants want significantly less milk. The costs of balancing include both the expense of obtaining "extra" milk when milk is "short," and the cost of finding alternative places to dispose of milk when milk is "long." These costs can be substantial: it can cost us in the range of \$3.00-4.00/cwt, for example, to deal with both the extra needs for milk in the time before the Christmas holidays, and to dispose of the extra milk we will have on hand when the plants close for the holidays. Similarly, we estimate that it generally costs us about \$2.00-3.00/cwt to acquire the extra milk we need to deal with increased demand in September when school starts. When DMS and DFA undertake to supply

essentially all of a plant's need for milk, we charge some additional fee or premium to cover this cost of balancing. When a coop or independent dairy farmers are supplying only a percentage of a plant's needs, on the other hand, they generally are not providing the balancing service and therefore are paid less for their milk. Since the non-DMS farmers who will be providing 10-20% of Dean's needs in the Northeast will likely not be obligated to provide balancing services, that fact alone would make the "competitive market price" for their milk less than the "competitive market price" for DMS' milk. In addition, if we cannot renegotiate our price with Dean after we lose this volume, DMS will be bearing 100% of the balancing cost but only providing 80% of Dean's milk, which will impose yet another additional cost on the farmers who market through DMS.

12. Given both of these factors—(1) the different perspective that dairy farmers and processors often have on marketplace conditions and what constitutes a "competitive market price," and (2) the fact that Dean's offer to purchase pursuant to the Proposed Settlement Agreement will be only for a partial supply, and thus not include the cost of balancing—it is predictable that, on many occasions in the thirty month window provided by the Proposed Settlement, the "competitive market price" that Dean, in its sole discretion, determines to offer to non-DMS dairy farmers will be less than the "competitive market price" then being charged by DMS.

13. Dean paying a lower price to non-DMS dairy farmers at these three major plants will have a direct and significant impact on the prices paid to dairy farmers who market through DMS. First, if Dean does, under the terms of the Proposed Settlement Agreement, begin buying up to 60 million pounds a month at these three plants for a price less than the price DMS had been charging, Dean will, if past practice is any predictor, soon demand that DMS likewise lower

the price on the approximately 80 million pounds of milk that DMS will continue to ship to those plants, and it may eventually, depending on local marketplace conditions, seek some reduction in the price of the milk DMS ships to some or all of the other Dean plants throughout the Northeast. The consequence of that could be significant, as Dean is currently purchasing about 170 million pounds of milk per month from DMS at plants *other than* the three specified in the Proposed Settlement.

14. The pricing effects will not stop there. DMS has a commitment to our customers, including Dean, that DMS will do its best to make sure that our customers "stay competitive" with other processors—in other words, that they are not disadvantaged by paying more for raw milk than those with whom they compete. As a result, if Dean begins paying less for raw milk at these three plants, then other processors to whom DMS markets raw milk will surely demand that DMS cut the price to the plants of theirs that are competing for retail customers with Dean's plants in East Greenbush, Franklin and West Lynn (such as the HP Hood plant in Concord, MA).

15. This adds up to a very significant set of costs to the dairy farmers who market through DMS if Section 9.2 of the Proposed Settlement is approved, which will include the total of (1) any price cut that DMS would absorb to market the 60 million pounds it used to ship to East Greenbush, Franklin and West Lynn, to customers other than Dean, (2) the additional expense of shipping those 60 million pounds to new and almost certainly less convenient locations, (3) the price cut that Dean will surely demand on the 80 million or so pounds of milk that DMS will continue to provide to the three specified Dean plants, as well as to a number of the other Dean plants in Order 1, and (4) the additional lost revenue from any price reductions

that DMS would then be obliged to give to other processor customers who compete with these Dean plants.

16. The "offer to purchase" provisions in Section 9.2 of the Proposed Settlement will take business opportunities and money away from dairy farmers who currently market their milk through DMS, whether those dairy farmers belong to the coops that own DMS (Dairylea, DFA and St. Alban's) or to one of DMS' affiliated coops, or if they ship through DMS as an independent. It will cost the dairy farmers who market their milk through DMS in terms of reduced opportunities, lower prices for their milk and increased costs.

17. Based on my understanding of the market, in order for Dean to find 60 million pounds of non-DMS milk to serve the three plants listed in Section 9.2, Dean will almost have to convince some number of independent dairy farmers who had been marketing through DMS to sell their milk directly to Dean. I would expect that part of their pitch would be that even if they pay those farmers less than they are paying DMS, the dairy farmers can net more if they do not have to share in the costs that DMS incurs, especially the cost of balancing. For some dairy farmers, depending on location, farm size, hauling costs, and the like, that could be true—if you are located near a plant, and can get your milk there cheaply on your own, then you could in the short-term appear to be better off if you don't have to help defray balancing costs or pool your hauling costs with those of other dairy farmers. For those who continue to ship through DMS, they will have to bear an increased percentage of the balancing costs, as well as the other costs and revenue reductions I have outlined here.

18. In my experience, one of the primary reasons dairy farmers join cooperatives is the feeling that individually they have very little ability to negotiate a fair price for their milk. Working together through coops and common marketing agencies allows them to do a better job

negotiating a fair return. This Proposed Settlement will make it harder for the dairy farmers who market their milk together through DMS to get a fair return for their milk.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on this 18th day of January, 2011, in Syracuse, New York.

Gregory Wickham